

IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO
COMPANY, et al.,

Defendants.

Miami-Dade County Courthouse
Miami, Florida
Wednesday, 9:15 a.m.
November 3, 1999

TRIAL - VOLUME 384

The above-styled cause came on for trial
before the Honorable Robert Paul Kaye, Circuit Judge,
pursuant to notice.

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On behalf of Defendant Council for Tobacco Research

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DEFENDANTS'	OFFERED	ADMITTED	FOR ID
EXHIBITS	PAGE	PAGE	PAGE

None

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(Whereupon, the following proceedings were had:)
THE COURT: Good morning, all. Have a seat,
please.
All right. I guess it's your presentation,
sir.
MR. ROSENBLATT: Well --

7 MR. DODDS: Your Honor, I believe this is our
8 motion.
9 MR. ROSENBLATT: Yes. I mean, I'm trying to
10 figure out exactly where we are on this. I mean, I
11 know they made a motion.
12 THE COURT: Okay.
13 MR. DODDS: Your Honor, as Your Honor is
14 aware, we had previously made a motion to preclude the
15 testimony from Dr. Richmond, and this morning I
16 received --
17 THE COURT: Dr. Richmond is in the courtroom?
18 MR. DODDS: Yes.
19 THE COURT: If you would, kindly step
20 outside, sir.
21 (Dr. Richmond exited the courtroom.)
22 MR. DODDS: And, Your Honor, we had some
23 argument on this motion last Thursday, and since that
24 time, I have received a further briefing from
25 plaintiffs' counsel, and I'd like to address

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1 particularly the issues raised in that briefing
2 received this morning, which is entitled: Engle
3 Florida Class Supplemental Response to Defendants'
4 Joint Motion to Preclude Expert Testimony of
5 Dr. Richmond.
6 They --
7 MR. ROSENBLATT: You have it on your desk.
8 THE COURT: Yes, I know. But I don't have my
9 glasses. They're somewhere.
10 (Discussion off the record.)
11 MR. DODDS: Your Honor, there are three basic
12 grounds for our motion, and I won't review all of them
13 as I did last Thursday.
14 The first one is that we -- well, let me back
15 up.
16 There are three areas that Dr. Richmond, as I
17 understand it, would testify to: Medicals, specific
18 causation with respect to Mrs. Farnan, Mr. Amodeo.
19 Two: Addiction, with respect to each of
20 them.
21 And three: The extent to which they were
22 influenced in any way in their smoking behavior by
23 conduct of the defendants.
24 I'll take those up one by one. The first
25 question is: Can Dr. Richmond testify regarding

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1 medical causation with respect to these two
2 individuals? And we start, of course, with the premise
3 under the Florida Rule of Evidence 90.702, that the
4 expert must be qualified by skill, experience,
5 training, or education.
6 We also have the definition of an expert
7 provided by Florida Civil Procedure Rule 1.390, which
8 says that the expert witness has to be possessed of
9 special knowledge and skill about the subject matter
10 upon which called to testify.
11 So, you have to have experience and training

12 and it has to be in the subject matter on which they're
13 going to testify.

14 The case law, Your Honor, is very clear. The
15 principal case, I think, that is germane and that we
16 rely on is the case of United Technologies
17 Communications Company versus Industrial Risk Insurers.
18 That appears at 501 So.2d 46. I have a copy for Your
19 Honor.

20 THE COURT: Thank you.

21 MR. DODDS: And this was a case in which the
22 only issue, really, on appeal was whether or not the
23 trial court erred in admitting testimony of an expert,
24 and on Page 48, which is, I believe, the third page of
25 the case that I gave you on the right-hand side, the

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1 Third District Court of Appeals quoted the same rule I
2 cited to you, Rule of Civil Procedure 1.390(a), and
3 went on to say the following: It is not enough, then,
4 that a witness is qualified in some general way.
5 Doctors cannot give expert testimony -- expert opinions
6 in all fields of medicine. But the witness must be
7 possessed of special knowledge about the discrete
8 subject matter upon which he is called to testify.

9 So, where are we? The question now is: Does
10 Dr. Richmond have special knowledge about the
11 discrete subject upon which he is called to testify;
12 the general rule being, doctors cannot give expert
13 opinions in all fields of medicine.

14 When you look at -- I went back, Your Honor,
15 since last Thursday, to look at Dr. Richmond's
16 deposition in the Broin case, and he was asked the
17 following question, I believe, by Mr. Ross. The
18 question was: All right. Would you consider yourself
19 an expert in any other particular field of medicine,
20 other than pediatrics?

21 Answer: Yes. I have expertise in the field
22 of child development and in maternal and child health,
23 and also in the field of public health. And my title
24 when I came to Harvard was professor of psychiatry and
25 human development, so I'm not board certified in

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1 psychiatry, but I do have competence in the field of
2 psychiatry.

3 He went on to question: Other than those
4 that you have listed, any other field of medicine that
5 you would consider yourself to have particular
6 expertise in?

7 Answer: No. I think those would be the
8 areas.

9 In other words, Dr. Richmond testified under
10 oath that his expertise was in pediatrics, child
11 development, maternal and child health care and public
12 health.

13 That's not the issue in this case. The issue
14 in this case is whether or not an individual's lung
15 cancer, and in another case larynx cancer, were caused
16 by their smoking. And I respectfully suggest by

17 Dr. Richmond's own testimony, he lacks the expertise to
18 testify in those areas.

19 Let me move on. We've now dealt with, I
20 think, the question of whether he has the credentials
21 to talk about specific causation.

22 And I reviewed this last week. He has not
23 looked at pathology or X-rays. He's not an oncologist,
24 he's not a radiologist, he's not a pulmonologist, he's
25 not a thoracic surgeon, he's not an otolaryngologist.

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1 The plaintiffs have listed people in those fields, so
2 people like that are coming. He's just not one of
3 them.

4 The only real response to this that
5 plaintiffs have is that he was a Surgeon General. And,
6 of course, he had a distinguished career as Surgeon
7 General. He read, by Mr. Rosenblatt's description, the
8 thickest Surgeon General's Report, but I suggest to
9 Your Honor that that does not convert a pediatrician
10 into an expert on laryngeal cancer or lung cancer.

11 The second question is addiction. Now,
12 Dr. Richmond has some background as a child
13 psychologist. The question here is whether or not he
14 has done the work, by his own admission, that would
15 permit him to render an opinion with respect to
16 addiction.

17 He testified, Your Honor, that he has never
18 rendered an opinion with respect to addiction without
19 examining the individual. He's not done that. So, I
20 would say, Your Honor, that he simply lacks the
21 foundation, even if he were to have the expertise -- of
22 course, he's never done any research in this area or
23 those sorts of things, and his primary focus was in
24 childhood development, not in substance abuse.

25 But that to the side, he simply has not done

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1 the work that, by his own admission, he would want to
2 do and need to do without -- before rendering an
3 opinion with respect to whether these two plaintiffs
4 were addicted.

5 He also testified that there are certain
6 tests that can be used to determine addiction. He
7 doesn't know whether they were even done in this case.
8 And they have been done, both by another physician, who
9 will be testifying on behalf of the plaintiffs, and by
10 our witnesses, and there will be testimony on that. I
11 just don't think, since Dr. Richmond says he would like
12 to have that, and he hasn't seen it and hasn't done it,
13 that it shouldn't come in.

14 And on both of these subject matters, Your
15 Honor, I think that it's important to recognize that
16 the plaintiffs, obviously, will have experts in these
17 more specific fields. They've listed an
18 otolaryngologist. They have listed pulmonologists.
19 They have listed people who they think have specific
20 credentials with respect to addiction.

21 Why, then, Dr. Richmond? Well, my sense is

22 that they would like to have Dr. Richmond testify
23 because he is an eminent man, he was Surgeon General.
24 I think the prejudicial impact of that outweighs the
25 limited probative value of his opinions based on his

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1 own conceded lack of expertise in these fields.

2 The third question is, and I want to spend a
3 little more time on this, is whether or not
4 Dr. Richmond should be permitted to testify about the
5 kinds of information that smokers, in general, were
6 exposed to, and extrapolate that, if you will, to the
7 individual.

8 The plaintiffs have said in their papers, and
9 this is at Page 4, Your Honor, the first paragraph:
10 Dr. Richmond has testified in his deposition, and will
11 testify at trial, that members of the public, including
12 physicians that smoke, were confused and misled by all
13 of the contrary evidence from the tobacco industry, and
14 smokers, such as Frank Amodeo and Mary Farnan, would be
15 similarly confused and misled.

16 Well, the question in this phase, I
17 respectfully suggest, is not whether members of the
18 public were misled. It's not whether they -- these two
19 individuals would have been misled. We're here to
20 decide whether they were misled. That is the issue and
21 that is not something that Dr. Richmond can testify to.
22 How do we know? Let's look at his deposition in the
23 Amodeo matter.

24 The question: In coming to court and
25 testifying about Mr. Amodeo, do you anticipate

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1 discussing any particular cigarette advertisements as
2 affecting Mr. Amodeo?

3 Answer: No. I don't plan to.

4 Question: Do you know of any specific
5 advertisements that, in your opinion, did affect
6 Mr. Amodeo's decision either to start smoking or to
7 continue smoking?

8 Answer: No, I don't know of any specific
9 ones, no.

10 Question: Are there any specific public
11 statements by the tobacco companies or any member of
12 the tobacco industry you anticipate discussing as
13 having had an effect on Mr. Amodeo, in terms of his
14 decision to start smoking or to continue smoking?

15 Answer: Their effects on him, not on me?

16 Question: Their effects on him, that's
17 right.

18 Answer: No.

19 So, we know now that Dr. Richmond can't and
20 won't testify about the effects on these two
21 individuals.

22 Plaintiffs want to have him testify that
23 members of the public were misled, and really the only
24 basis they have for saying that is that somehow in
25 opening statement, counsel for the defendants opened

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1 the door. And they have, I believe, somewhat
2 selectively chosen portions of the transcript from
3 yesterday. It's obviously fresh in our mind.
4 I thought I'd point out the two basic
5 statements that the two primary opening counsel
6 delivered on this very subject yesterday. The first
7 was Mr. Reid.

8 Mr. Reid says, and this is at Page 38788 --
9 I'm sorry -- 38778 of the transcript. He says as
10 follows, carrying over to the next page, quote: "Now,
11 you heard a great deal of testimony in Phase I about
12 general awareness, about what the American public has
13 known over time. You remember, Dr. Ford testified to
14 that. None of that will be repeated here in the
15 general sense, because this is not about general
16 awareness.

17 "What you will hear in this phase of the
18 trial is evidence specifically related to what
19 Ms. Farnan was exposed to during the time that she
20 chose to spoke."

21 Now, counsel has referenced the later portion
22 a little ways down in the transcript, where he talked
23 about information that was available to her. And they
24 don't cite what came after that, which is all of the
25 specifics of what was available to her, in fact, and

1 that is what our witnesses will talk to and, hopefully,
2 Mrs. Farnan, if she's consistent with her deposition
3 testimony, will also say things that she saw in school,
4 things she learned in nursing school. All of this
5 Mr. Reid went through, I think, in some detail. So
6 when he was saying -- and the warnings, of course.

7 So when he was saying that that was the
8 information that was available to her, he was talking
9 specifically and not generically.

10 Mr. Webb, in his opening statement, Page
11 38832, continuing on to the next page: "The second
12 issue I put on here is awareness and choice. We're
13 going to talk about that, too, because that's an
14 individual, specific issue that relates to two
15 individual specific plaintiffs that are here trying
16 their cases during the course of this Phase II trial."

17 So, what counsel promised, and what we intend
18 to do during this case, is focus on these two
19 individuals. That's what we're here for. That's what
20 we believe Phase II should be about.

21 We are not going to put up a big chart, the
22 mountain of awareness. That's been done. We're not
23 going to bring in Dr. Ford to talk about all of the
24 same things.

25 But I suggest to you that that is exactly

1 what they propose to do with Dr. Richmond. And if they
2 do that, Your Honor, we will -- I guarantee you, both

3 sides will be retrying the general awareness case for
4 months, because, frankly, we didn't do as much as we
5 could have in it, because Your Honor wanted to keep the
6 question of choice in the second phase.

7 That's not what we'd like to do, though.
8 This case should be about these two individuals. This
9 is a fraud case. Not fraud on the public, fraud on two
10 people. And it's very facile to say, "They were
11 members of the public," and, indeed, they were. That's
12 kind of "So what?" I mean, we're all members of the
13 public. We were not all defrauded by the tobacco
14 industry. We have 50 million people who stopped
15 smoking, and somehow they managed to.

16 Now, what they are proposing, Your Honor, is
17 a form of what is known in fraud law as fraud on the
18 market. And that, Your Honor, is a line of reasoning
19 that is applied in federal securities law cases, and we
20 can go into it, but it is something that the United
21 States Supreme Court adopted in the case of Basic
22 versus Levinson, and it applies to federal securities
23 law cases. It has never been applied in Florida to any
24 common law fraud claim.

25 And I will provide Your Honor with cases

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1 directly on point saying exactly that. And we can
2 spend the time to go through it. Thank you.

3 But I don't think there's any question but
4 that the fraud-on-the-market theory, which is a theory
5 that the plaintiffs want to travel under, is not
6 accepted law, good law in the State of Florida.

7 Why not? Well, it makes a lot of sense. The
8 fraud-on-the-market theory in federal securities law
9 cases precedes from the belief that there is one thing
10 at least that all people who buy stocks and other
11 securities rely on. That's the price. And the concept
12 is, is that the price of a stock always accurately,
13 immediately takes into account all information out
14 there, and that all people rely on that information
15 because it's in there. It's predicated on years of
16 academic research about a theory known as the efficient
17 market thesis. I won't go into it.

18 But the suggestion here, Your Honor, is that
19 all they have to show is that there's a taint, like
20 smokers and members of the public were guppies swimming
21 in the water.

22 THE COURT: What has this got to do with
23 whether Dr. Richmond will testify?

24 MR. DODDS: Okay. The reason why they want
25 to put on Dr. Richmond on this subject matter is to

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1 have him talk about whether smokers, whether the public
2 was affected or misled, and then say that they would
3 have been misled like members of the public. That is a
4 leap, Your Honor, that Florida law will not permit.
5 Consequently, we believe that Dr. Richmond should not
6 testify on that subject matter.

7 Dr. Richmond testified in his deposition he

8 doesn't know what advertisements, what industry
9 statements and conduct had to do with these two
10 plaintiffs' smoking behavior. If he were to talk about
11 that, that would be one thing. That's what we're here
12 for. That's what our witnesses will talk about.
13 That's what the plaintiffs will talk about.

14 But to say that -- repeat what he said in
15 Phase I, which was that smokers were misled, that is
16 really a step backwards, I propose, Your Honor, and
17 that's not what we're here for.

18 So, to recapitulate, Your Honor, with respect
19 to causation, he simply lacks the expertise. Florida
20 law makes it very clear, he is required to have the
21 expertise, and he's admitted by his own testimony that
22 he doesn't.

23 Addiction: He's admitted by his own
24 testimony that he did not perform the very examination
25 that he has done and would want to do in order to

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1 render such an opinion, hasn't done, hasn't seen the
2 tests that others will provide in this trial on that
3 question.

4 And, third, with respect to whether or not
5 these two individuals were misled -- I mean, it's kind
6 of like being an oath-helper, Your Honor. I mean,
7 they'll testify about it themselves. If he could talk
8 more particularly as to what they saw, what they didn't
9 see, how that affected them specifically, not some
10 mythical or construct of what a smoker or a member of
11 the public is, but what they were exposed to and what
12 they did as a result, that would be one thing, and we
13 could not object to that.

14 But, you know, that, by his own testimony,
15 Your Honor, is not what he's going to talk about.

16 THE COURT: Thank you.

17 MR. ROSENBLATT: Your Honor, Dr. Julius
18 Richmond got his M.D. degree in 1939, 60 years ago. I
19 am just totally nonplused to believe that lawyers could
20 make the argument, after this incredibly distinguished
21 60-year career, both as a hands-on, treating physician,
22 and as the dean of a medical school, his long
23 affiliation with the Harvard Medical School -- we
24 submit it would be error not to permit Dr. Richmond to
25 testify.

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1 Now, although the faces have changed on that
2 side of the table, the tactics remain precisely the
3 same. They first take a shot at excluding a witness,
4 and then they try -- their fallback position is to try
5 to limit the witness.

6 Dr. Richmond is eminently qualified --
7 eminently qualified to testify about the subject matter
8 of Mary Farnan's lung cancer and Frank Amodeo's throat
9 cancer.

10 He became board certified in pediatrics in
11 1947. During World War II, for four years, he was a
12 flight surgeon where he treated adults. He was at the

13 University of Illinois Medical School from 1947 to
14 1953.

15 He became chairman of the department of
16 pediatrics at the State University of New York in
17 Syracuse. He was the dean -- the dean of the State
18 University of New York in Syracuse, and in 1971, he
19 began his very long-time association with probably the
20 most single prestigious medical school in the world,
21 the Harvard Medical School.

22 And he went there as the director of a
23 psychiatric clinic for children, and I remind the Court
24 that both Mary Farnan and Frank Amodeo started smoking
25 as children. He was the chief of the department of

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1 psychiatry at Children's Hospital in Boston.

2 He went to Harvard as -- in addition to his
3 background in pediatrics, he was a full professor of
4 psychiatry and human development at Harvard. In
5 addition, he held the chair of the department of
6 preventive and social medicine. And after his tenure
7 as Surgeon General of the United States, he returned to
8 Harvard, and now he's a professor emeritus, but he is
9 still -- he is still at Harvard.

10 He's written over 250 articles. His three
11 specialty areas are pediatrics, psychiatry, and public
12 health.

13 During Dr. Richmond's tenure as Surgeon
14 General of the United States, there was the very thick
15 15-year anniversary of the ground-breaking 1964 Surgeon
16 General's Report, and Dr. Richmond has read every word
17 in lung cancer, throat cancer, addiction.

18 It's all -- he knows so much more than a
19 narrow oncologist, in terms of the relationship between
20 smoking and lung cancer, between smoking and throat
21 cancer, on the subject of addiction, than some hands-on
22 doctor who's never studied the relationship between
23 smoking.

24 Most doctors in practice simply make the
25 assumption that if someone has a history of smoking and

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1 they have lung cancer, of course, the smoking caused
2 it. But he studied it.

3 Mary Farnan is a woman. The 1980 Surgeon
4 General's Report was the health consequences of smoking
5 for women, where Dr. Richmond made the prediction that
6 as women started to smoke more, their lung cancer rates
7 would increase as it happened with the men, and that's
8 precisely what happened.

9 And, you know, Dr. Richmond has reviewed
10 their charts in detail. He's read their depositions.
11 He's prepared to come in and testify about them.

12 And someone who's practiced medicine for some
13 60 years, it is normal and natural -- you have a new
14 patient. The doctor gets charts from earlier
15 physicians or earlier hospital records; they constantly
16 reach conclusions and opinions based on their review of
17 charts. An examination of Mrs. Farnan or Mr. Amodeo

18 would be meaningless, because the throat cancer and the
19 lung cancer don't exist at the present time.

20 He has an enormous amount of expertise in
21 otolaryngology disorders, the throat, the larynx. The
22 most common complaint of children in pediatrics is the
23 throat, a sore throat, a throat infection. He's seen a
24 zillion children with sore throats. He's abundantly
25 familiar with the acute swelling of the epiglottis.

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1 He's used a laryngoscope. He's diagnosed tonsils which
2 had to be operated on.

3 And it's just -- it's really beyond belief
4 that we could be having this argument about the Surgeon
5 General of the United States, who in addition to all of
6 his academic achievements, his administrative role, the
7 dean of a medical school, was a hands-on physician at
8 all times, in all his associations, you know, with
9 these medical schools.

10 And, you know, counsel -- counsel have set
11 up, and I want to -- I want to just demolish this right
12 now, because, as usual, they have set up an absolutely
13 absurd artificial barrier, because what they're saying
14 to Your Honor is the most preposterous thing
15 imaginable. What they're saying, with a straight face:
16 Well, we're going to ask Mary Farnan, "In 1972, can you
17 specifically remember a Life magazine ad which
18 influenced you to do such and such?" That's not the
19 way it works. And everyone knows that's not the way it
20 works.

21 The truth of -- if people are honest, they
22 come into certain -- well, was it from the Tobacco
23 Institute? Did I see it in Life magazine? Did I see
24 it in that magazine?

25 They know they've come into possession of

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1 certain information. They've heard time and time again
2 from the tobacco industry that most smokers do not
3 develop lung cancer, whether it's 90 percent or less --
4 they think that -- their requirement is that we have to
5 have Mary Farnan say: Well, I remember in 1978 the
6 Tobacco Institute came out with a statement, and I read
7 it in the Orlando Sentinel or some newspaper in
8 England.

9 No, that's not our burden. No, that's not
10 our burden.

11 And it's obvious, as we pointed out in this
12 memo, Your Honor, that they opened a very -- they did
13 open a very wide door, and we quote from the opening
14 statement of Mr. Webb yesterday: "Now, when he made
15 that decision, Frank Amodeo was not -- was not some
16 young child. He was an adult. He was married. He was
17 raising a family. He made a decision two years after
18 the Surgeon General of the United States in 1964 had
19 rendered that landmark opinion that you heard about,
20 which got this massive attention in this country, which
21 connected cigarette smoking to lung cancer in males."

22 So, he's talking about a generalized

23 knowledge that Mr. Amodeo, that Mrs. Farnan should have
24 had based on the Surgeon General's Reports, and there's
25 no way to avoid that; there's no way to avoid that

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1 because they're part of their culture, they're part of
2 their environment and what is out there.

3 And Mr. Reid says: "The evidence will be
4 generally that there was a great deal of information
5 about the risks of smoking, which was available to
6 Mrs. Farnan over all of the years, from the time she
7 began to smoke, and all of the years that she chose to
8 continue to smoke."

9 What was the information out there? They're
10 going to talk about health books in the school system.
11 Is Mary Farnan going to say, "Oh, yeah, when I was in
12 the fifth grade, I remember a paragraph" -- of course
13 not. Of course not.

14 She may remember -- any smoker may remember
15 that they had an exposure or they didn't have an
16 exposure, they had a teacher that talked about it, but
17 no one is going to remember the precise details.

18 So, of course, we're talking about the
19 information that was out there, about the risks and the
20 information that was out there creating a false
21 controversy and poo-pooing the Surgeon General's
22 Reports, and that information has to come in in
23 individual cases, as well, because they're out there
24 and they're talking about a period of decades.

25 And Dr. Richmond is simply, you know, just

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1 eminently qualified to testify on these issues. And we
2 have in here, in our written submission, Judge, on the
3 issue of awareness, that Dr. Richmond should be
4 permitted to testify, and he's -- he's not going --
5 we're not going to rehash Phase I and go over
6 specifics, but certainly the general information that
7 was out there during the '50s and '60s and '70s and
8 '80s, when these two specific individuals were smoking.

9 And we should simply get on with it. And
10 this is just one of the most qualified witnesses in
11 America on the subject of the relationship between
12 cigarette smoking and disease. And on the subject --
13 and he was a full professor of psychiatry. They're
14 trying to -- they're coming in, as if he's some
15 elderly, retired pediatrician.

16 Well, I'm sorry, gentlemen. He's one of the
17 most -- he's one of the most prominent medical people
18 in the country. The President could have selected
19 anybody. He selected Julius Richmond to become his
20 Surgeon General because he was abundantly qualified in
21 all of these areas, and this is a case with two
22 individuals, but the issues are whether smoking caused
23 the lung cancer, whether smoking caused the throat
24 cancer, whether they are addictive, and the issues of
25 their awareness, of the risks, and were they misled,

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1 and I can think of no one more qualified to testify on
2 these subjects.

3 MR. DODDS: Your Honor, I just have -- Your
4 Honor, I'd like to deal with the last point regarding
5 the testimony about the public at large.

6 This is a fraud case, Your Honor. The
7 suggestion that they don't have to prove that a person
8 saw a statement because it was a long time ago, that's
9 wrong.

10 In our pleadings, we have particularity
11 requirements in pleadings with regard to fraud. Why?
12 Because for this very reason, because if someone can
13 just say, "It was out there. I don't remember when. I
14 don't remember what," anybody can say that they are
15 fraud, and we can't deny it.

16 It's another reason why we have the fraud
17 statute of repose, and I'm going to hand up to Your
18 Honor the papers that have been filed on this and ask
19 you to hear that issue, as well. My colleague,
20 Mr. Lerman, will address that when Your Honor deems it
21 appropriate.

22 But this is a fraud case. We must know what
23 it is that they were defrauded by. What did they see?
24 In fact, if they can't remember it, how can we rebut
25 it? How can we say they weren't influenced by it?

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1 That's exactly why.

2 For instance, the legislature has determined
3 for many years that fraud must be alleged with
4 particularity and proven with particularity. And the
5 suggestion that they can just say they were out there
6 and they're a member of the public and there was all
7 this misleading stuff out there, if that cuts it, Your
8 Honor, then every fraud case will have nothing to do
9 with the individuals and be just about fraud on the
10 public, and that's not the law in this state. And I
11 suggest to Your Honor that we will be retrying all of
12 Phase I to get into that.

13 I also want to point out that with respect to
14 the advertising impact on youth and his expertise,
15 Dr. Richmond testified, you'll recall, in Phase I, he
16 talked about youth marketing, he talked about whether
17 young people are able to appreciate the risks. He has
18 done that once already.

19 All of the Phase I evidence is there.
20 Mr. Rosenblatt is going to be, you know, able to argue
21 all of that, if it's relevant, in his closing
22 arguments. We don't have to repeat it here, though,
23 Your Honor.

24 With respect to his credentials, by his own
25 admission, he lacks expertise in these fields, and I

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1 suggest to Your Honor that there's no Surgeon General
2 exception. He's read a lot. It really doesn't make
3 him an expert.

4 There are 40 or 50 diseases in the Surgeon
5 General's Reports. If he's going to be able to testify
6 about all of them, then the Third DCA's ruling in the
7 case that I handed up to Your Honor makes no sense.

8 When he talks -- for example, Mary Farnan,
9 the big issue in this case is whether or not she had
10 BAC. Now, he acknowledges that he has no individual
11 opinion on that score. He's just going to recite and
12 repeat what the pathologists have already said in this
13 case. That's not an expert opinion, Your Honor. And I
14 think it's demonstrative of the fact that he is not the
15 appropriate person to address these questions.

16 Your Honor, we do not want to repeat Phase I.
17 We want to get specific. And, frankly, if the only way
18 to try this case is to argue about what the public knew
19 or what the public did not know, we're going to be here
20 for a very long time.

21 And to narrow it I think is the right choice.
22 That was the trial plan. That is what the plaintiffs
23 argued for and they've been arguing for. The Third DCA
24 said in class certification, there are common issues to
25 be tried. That has been done. The common issues about

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1 what the common people, smokers and the public knew,
2 that has been tried. Tried for months.

3 We're not the ones trying to undermine that
4 verdict. They have rendered their verdict on those
5 issues.

6 Now it's particular. The law requires
7 particularity. And if they're unable to meet that
8 burden, at least as to these two plaintiffs, that is
9 not an occasion for changing the rules.

10 Thank you.

11 THE COURT: Okay.

12 MR. DODDS: Your Honor, I'd like to hand up
13 now -- these are the papers previously filed some weeks
14 ago on the statute of repose issue, and we'd ask that
15 Your Honor --

16 THE COURT: Okay.

17 MR. DODDS: -- take that up when Your Honor
18 is ready to address it.

19 Thank you.

20 THE COURT: I assume that you've given copies
21 to counsel?

22 MR. DODDS: They've been previously filed. I
23 do have a copy for them.

24 THE COURT: All right. The only question I
25 have at this point -- well, not the only one. One of

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1 them.

2 There's been a list of experts offered on
3 both sides. I haven't seen them, or I don't have them
4 with me.

5 Is there an overlap or duplication of the
6 experts? In other words, how many experts per side did
7 we decide per issue?

8 MR. DODDS: Your Honor, if I could address

9 that. We didn't decide on a particular number. We
10 have attempted to have particular experts for
11 particular plaintiffs on particular subject matters.
12 So, we're not going to offer two psychiatrists on
13 Mr. Amodeo or two pathologists on Mrs. Farnan's BAC
14 issue. We're not going to double up.

15 I do believe we discussed, Your Honor, the
16 other day, the question of whether there would be
17 repetition for the plaintiffs' side. There were
18 individual disclosures. I know Your Honor felt that
19 there was some of that on both sides.

20 But as far as we can tell, Your Honor, there
21 are a number of witnesses who will seemingly address
22 the same issues, sort of at a general level; namely,
23 Dr. Richmond, Dr. Burns, Dr. Petty, Dr. Siegel,
24 Dr. Cummings, Dr. Samet, and Dr. Goodwin. All of them
25 had the same disclosure. Some of them may have dropped

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1 out -- oh, and Dr. Davis.

2 And some of them may have dropped out of one
3 or two things. But then they'll also -- Dr. Feingold,
4 who has -- is the only expert from the plaintiffs' side
5 who has examined -- well, I'm sorry -- did not examine
6 Mrs. Della Vecchia, but did examine both Mr. Amodeo and
7 Mrs. Farnan.

8 And they also have a pathologist. They also
9 have a Dr. Sidransky.

10 I believe, Your Honor, that we're going to
11 hear a lot of the same things over and over again.

12 THE COURT: Well, that's the reason for my
13 questions. How much of this is overlap and how much is
14 going to be --

15 MR. ROSENBLATT: Counsel has mentioned
16 several witnesses, some of whom we may call; some of
17 whom we probably will not call. And, you know,
18 that's -- I'm going to -- I'm going to see how it goes.

19 THE COURT: Okay. I understand that. But
20 having read the disclosures, which were general in
21 nature --

22 MR. ROSENBLATT: Right.

23 THE COURT: -- I mean, it really didn't shed
24 any light on what was going to happen in the trial, as
25 far as I'm concerned, as far as the Court was

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1 concerned.

2 MR. ROSENBLATT: Obviously, in this
3 situation, we're in a little different situation,
4 because, for example, if I bring in a surgeon to
5 describe the surgery that he performed on Mrs. Farnan
6 and he's here anyway, I certainly would want to, even
7 though it may be a couple of other --

8 THE COURT: I'm talking about general people,
9 not hands-on. That would be the general.

10 MR. ROSENBLATT: Okay.

11 THE COURT: In other words, Dr. Richmond, in
12 your opinion, has got three areas -- or at least in
13 counsel's opinion, the defense, has three areas of

14 testimony that he's going to be responsible for, and
15 one of which was, you know, the specific causation
16 issue. The other is addiction, and the other is the
17 effect of the conduct. We can translate that into the
18 psychiatric.

19 So, if you're going to have a psychiatrist or
20 a psychologist come in on another specialty to testify
21 about the same thing that Dr. Richmond will be
22 testifying about, then we would have this overlap when
23 it comes to the psychiatric aspect of it.

24 So, I don't know what your plans are and what
25 you propose to do along those lines. I don't know if

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1 anybody is more hands-on than Dr. Richmond in that
2 field. Maybe they're both out there in the general. I
3 don't know.

4 MR. ROSENBLATT: Of course, for example, like
5 Dr. Burns is scheduled for tomorrow, and Dr. Burns is a
6 pulmonologist, so, obviously, he's going to focus in on
7 the lung cancer --

8 THE COURT: But I don't want --

9 MR. ROSENBLATT: -- in more detail, in
10 infinitely more detail.

11 It's really -- it's really difficult to
12 avoid -- we're going to do our best, believe me, to
13 avoid a lot of repetition and a lot of overlap, but
14 there will be some.

15 MR. REID: Judge, maybe I could add one point
16 to this.

17 As counsel mentioned, we have tissue slides
18 and we have cytology slides, and that -- that's what
19 the experts look at to find out what this is. And in
20 the case of Dr. Richmond, as you just heard, he's never
21 looked at any of those, and when he was asked about
22 whether he thought it was BAC, he said: Well, the
23 other people looked at it and said it was.

24 THE COURT: He deferred.

25 MR. REID: So, he doesn't have any

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1 independent testimony about something like that.

2 THE COURT: All right. I understand that.

3 Well, it's obvious that you don't have to be
4 in the same practice field to be an expert, as long as
5 you can qualify yourself in fields of study extensively
6 in the field. You also -- it's a little confusing,
7 because you're talking in general with Dr. Richmond,
8 rather than the very specifics with him.

9 MR. ROSENBLATT: He's going to be asked very
10 specifically: In your opinion, was Mary Farnan's --
11 did Mary Farnan have, you know, BAC, based on your
12 review of the records?

13 True, he didn't review the -- again, they try
14 to establish a barrier. You have to do cytology. No
15 one does cytology when you're sued in a lawsuit. And
16 it's only the tobacco companies. No one does this,
17 because no one -- no one is interested. They're
18 interested in the real world. They're interested in

19 getting rid of the cancer, and when someone has a
20 30-year smoking history, all of the doctors say, of
21 course, smoking caused it.
22 THE COURT: But we're not talking about that.
23 MR. DODDS: Your Honor, if I could address.
24 This is precisely the problem. Dr. Richmond
25 is going to be asked about whether he thinks it was
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1 BAC. Dr. Richmond didn't even look at the slides.
2 THE COURT: Well, that's a matter for you to
3 bring out.
4 MR. DODDS: Well, but, you know, there is a
5 role for Your Honor as a gatekeeper with respect to
6 expert testimony.
7 THE COURT: Well, he may say: No, I don't
8 have an opinion on BAC.
9 MR. DODDS: Well, he --
10 THE COURT: He may say that. I don't know.
11 MR. DODDS: He's's being asked to basically
12 agree with others. He's an oath-helper.
13 THE COURT: He can't just agree with others.
14 He can't.
15 MR. DODDS: His testimony, which I read, Your
16 Honor, said that's exactly what he's doing. He's
17 accepting others' findings on this score.
18 MR. ROSENBLATT: That's not accurate,
19 because --

20 THE COURT: Well --
21 MR. ROSENBLATT: -- because he's read Mary
22 Farnan's deposition. I have a right to give him a
23 hypothetical question, and whether from a clinical
24 standpoint, because part of the opening statement was
25 that in addition to the slide information, because of

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1 her age, her being a female, the location of the tumor,
2 it's all very consistent with BAC, and that certainly
3 is a subject he can testify on: In your experience, is
4 it consistent with BAC or some other form of lung
5 cancer, based on your educational --

6 THE COURT: Well, I think he's got the
7 expertise, based upon his background and history and
8 his study of cancer and the conditions that bring about
9 cancers, such as smoking and that. So, along those
10 fields, I think he can testify about that.

11 I agree with counsel on the issue of whether
12 or not just because the general public is exposed to
13 certain things that might be affected by it, I don't
14 think he can testify that Mary Farnan was or was not
15 affected by it. I think that's something that he can't
16 really testify about, unless he's treated her,
17 discussed with her and has some hands-on experience
18 regarding how she felt about it all. So, I think we'll
19 leave that to somebody else to testify about.

20 But as far as his knowledge of smoking and
21 cancer and adenocarcinoma, which he has studied and
22 which he has an understanding and knowledge of, I think
23 we'll let him testify about those things.

24 He also has a very good knowledge of
25 addiction and how it may affect people. He's read the
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1 reports of Mary Farnan's medical chart, and might be
2 able to render an opinion regarding that.
3 But, still, in a general nature, I don't
4 think he can be that specific because he hasn't -- I
5 don't know if he's treated her or discussed with her.
6 It doesn't appear to be.
7 We're in a very difficult area, okay, because
8 it's so general in nature. And I don't know how
9 specific he can be in his opinion with her. He's
10 already rendered opinions in Phase I, and I don't want
11 to go into that again.

12 MR. ROSENBLATT: I agree. I'm going to be
13 very specific.

14 THE COURT: Let me take a few minutes to
15 think it over.

16 (A brief recess was taken.)

17 THE COURT: Have a seat.

18 All right. Do you want to stand instead of
19 sit?

20 MR. SMITH: I was standing so I hope I might
21 get to speak with you, Your Honor.

22 THE COURT: I'm sorry?

23 MR. SMITH: I have something to raise, Your
24 Honor.

25 THE COURT: You do? I thought it was all
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1 finished.

2 MR. SMITH: This is a different matter, Your
3 Honor.

4 Last night -- last night in my room, someone
5 called me to tell me on PBS a show called Frontline was
6 on.

7 THE COURT: Yes.

8 MR. SMITH: And it was an hour on tobacco
9 issues involving my client, and I don't know whether
10 these jurors think it's okay to watch PBS, stay away
11 from networks or what, but I think we ought to voir
12 dire the jury and see if --

13 THE COURT: I do every morning when I ask
14 them what happened over the night.

15 MR. SMITH: Okay.

16 THE COURT: They had that show on that was
17 basically the show that involved the tobacco industry
18 and the government. I don't think it was this case,
19 but I didn't see it.

20 MR. SMITH: I think that's right, Your Honor,
21 but it was a very prejudicial and negative show to my
22 client. It would be inappropriate --

23 THE COURT: Well --

24 MR. SMITH: -- for the jurors to be watching.

25 THE COURT: There's also a lot of stuff on
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1 the Internet with your clients and the rest of them,
 2 which are very beneficial to your client, too, which is
 3 put out every day and is available on the Internet. So
 4 one hand --

5 MR. SMITH: As Your Honor pointed out
 6 earlier, the jurors would have to make an affirmative
 7 act to get on the Internet.

8 THE COURT: They also have an affirmative act
 9 to turn it off.

10 We go through this. You haven't been here
 11 before. We usually go through this every time the jury
 12 comes out.

13 MR. SMITH: I would simply request that the
 14 Court ask if anyone saw that show in particular.

15 THE COURT: All right.

16 MR. SMITH: Thank you.

17 MR. REID: Judge, could I just ask a
 18 question? Could we, to save time, have a standing
 19 objection on the opinions about addiction and
 20 causation, so we don't have to jump up every time he
 21 says them, based on your ruling with Dr. Richmond?

22 THE COURT: Yes. Well --

23 MR. REID: Thank you.

24 THE COURT: I want to limit Dr. Richmond's
 25 testimony. I'm not really sure how it's going to work

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1 out. I think we ought to voir dire him a little bit
 2 before we start.

3 I'm limiting him to any opinions he has which
 4 would relate to the specific causation area,
 5 Ms. Farnan, his knowledge of adenocarcinoma, cancer,
 6 smoking, things of that nature, the psychiatric effect
 7 on children, which would be his field of endeavor, but
 8 I don't think he can testify that she was, in fact --
 9 she, personally, was, in fact, affected, because I
 10 think that's a personal thing. I don't think he can
 11 opine on that.

12 So, I'm going to limit him in some degree.
 13 But I need to find out something from him on voir dire
 14 as to what it was that he actually was exposed to by
 15 way of records and things of that nature. I don't
 16 know.

17 So, let's bring him in and talk to him about
 18 that.

19 MR. ROSENBLATT: Do you want to question him
 20 or do you want me to question him?

21 THE COURT: No. You go ahead. I want to
 22 find out what he's going to testify about generally.

23 MR. ROSENBLATT: I told you. I told you what
 24 he's --

25 THE COURT: I don't want to go through a

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1 whole hour.

2 MR. ROSENBLATT: No. I told you, and I --

3 THE COURT: I just have to limit it. That's
 4 all.

5 MR. ROSENBLATT: You know, respectfully, you
6 don't have to, Your Honor.
7 (Dr. Richmond entered the courtroom.)
8 THE COURT: Good morning. How are you, sir?
9 We have a process here of what we call "voir
10 dire" outside the presence of the jury. We want to
11 find out a little bit about some of the aspects of your
12 testimony and what it is that you're going to actually
13 be testifying about.
14 I don't want to get into, you know, real
15 detail. We don't have time to do it twice. But
16 there's some general things that we did want to find
17 out about, how your testimony may relate to the issues
18 in this trial.
19 So, I'll let counsel start with some
20 questions.
21 Thereupon:

22 JULIUS B. RICHMOND, M.D.
23 having been called as a witness, was duly sworn,
24 examined, and testified as follows:

25 VOIR DIRE EXAMINATION

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1 BY MR. ROSENBLATT:
2 Q. Dr. Richmond, I think the Court is
3 particularly interested in knowing what -- what
4 materials have you reviewed on each of these
5 individuals, Mary Farnan and Frank Amodeo. Have you
6 reviewed the hospital records -- I'll first talk about
7 Mrs. Farnan -- the hospital records of Mrs. Farnan
8 covering her -- the diagnosis of lung cancer, first in
9 the left lung, then in the right lung, and then the
10 brain surgery, have you reviewed those records?
11 A. Yes. I have reviewed those records.
12 Q. Now, I think we have a copy of the records.
13 This is -- I'm going to hand you the records,
14 which you discussed when your deposition was taken
15 relating to Mary Farnan, and I would -- I would like
16 you to simply -- not every single page, but to go
17 through the records and tell us in a general way what
18 they contain, such as operative reports, pathology
19 information, that kind of thing.
20 A. Yes. These are the medical records reviewing
21 both her inpatient courses during the surgical
22 procedures she had on three occasions: I believe one
23 of the left upper lung, another of the right upper
24 lung, and then brain surgery somewhat later.

25 And the outpatient records are also
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1 contained --
2 Q. So, not only the inpatient records, but the
3 outpatient records?
4 A. Yes. Yes.
5 Q. And do those records give you background, for
6 example, as to Mary Farnan's smoking history and the
7 chronological course that her cancer has taken?
8 A. Yes. These records, in the traditional kind
9 of medical history, taking her -- the history of her

10 cigarette smoking is reasonably well-described.
11 Q. And have you -- in addition to reviewing Mary
12 Farnan's medical records, both inpatient and
13 outpatient, have you also read Mary Farnan's
14 deposition?

15 A. Yes, I have.

16 Q. And in that deposition did she discuss her
17 smoking history, the age she began to smoke, the
18 various brands she smoked, her quitting attempts, that
19 kind of thing?

20 A. Yes. She -- she did.

21 Q. And based on your review of Mary Farnan's
22 medical records, hospital records and deposition
23 testimony, do you feel that, based on your experience,
24 background, training, service as Surgeon General of the
25 United States, that you are in a position to render

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1 opinions as to whether or not -- as to what was the
2 cause of Mary Farnan's lung cancer and whether -- and
3 on the subject of whether or not she was addicted to
4 cigarette smoking, her specifically?

5 A. Yes. I believe I am prepared and qualified
6 to make judgments about her history and medical
7 conditions, and I particularly have been involved in
8 studies of adolescent development and preadolescent
9 development and habit formation and risk-taking
10 behavior, so I think I'm rather familiar with the onset
11 of her smoking; that is, the history of the onset of
12 her smoking at a relatively young age of 11.

13 Q. And with respect to Frank Amodeo, let me --
14 let me hand you the medical records which you had with
15 you during your deposition relating to Mr. Amodeo, and,
16 again, ask you, in a general way, tell us what these
17 contain.

18 A. These records contain the medical history of
19 the course of his illness, description of the biopsy
20 reports from the tissues, which had been removed from
21 his throat, and the subsequent course of treatment.

22 Q. Did those records reflect and explain to you,
23 although they might not explain to a layperson, did
24 those records give you a satisfactory explanation as to
25 why Mr. Amodeo is unable to eat and drink in a normal

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1 fashion?

2 A. Yes. I think medically and surgically, yes,
3 I can understand the background for his condition from
4 these records.

5 Q. And in those records, is there a clear
6 description as to the type of throat cancer Mr. Amodeo
7 had and the impact that that had upon his glottis and
8 his epiglottis and other structures inside his throat?

9 A. Yes, it does.

10 Q. Do those records also describe the intensive
11 radiation therapy that he had during the Summer of
12 1987, which was being utilized in an attempt to shrink
13 the throat tumor?

14 A. Yes. Dr. Allen Forbes, who is the radiation

15 therapist, in these records provides considerable
16 detail on what he did.

17 Q. And as with Mrs. Farnan, have you had
18 occasion to read the deposition testimony of Frank
19 Amodeo?

20 A. Yes, I have.

21 Q. And in that deposition, did he -- are you
22 familiar with his background, his age, his smoking
23 history, how old he was when he began to smoke, his
24 attempts to quit and the history leading up to the
25 symptoms of his throat difficulty?

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1 A. Yes.

2 Q. And based upon your review of those medical
3 records of Frank Amodeo and the reading of his
4 deposition, do you feel qualified, based on your
5 background, experience, training and your various
6 positions, public and private positions that you've
7 held in the medical field, that you are able to render
8 opinions as to the cause of Frank Amodeo's throat
9 cancer and on the subject of whether or not he was
10 addicted to smoking?

11 A. Yes, I believe I can.

12 MR. ROSENBLATT: Judge, unless there's --
13 THE COURT: Counsel.

14 MR. WEBB: Your Honor, just very briefly.

15 VOIR DIRE EXAMINATION

16 BY MR. WEBB:

17 Q. Doctor, my name is Dan Webb. I represent
18 Philip Morris.

19 Do I understand correctly that in connection
20 with the opinions that -- regarding causation, cancer
21 causation, with Mrs. Farnan and Mr. Amodeo, that those
22 opinions you've reached regarding causation, that
23 you've not done any medical examination of Mrs. Farnan
24 or Mr. Amodeo?

25 A. No, I have not.

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1 Q. Have you ever talked to them, taken a medical
2 history?

3 A. Not to take a medical history, no.

4 Q. Have you actually talked to them about their
5 condition or their health?

6 A. Other than in just meeting them, asking them
7 how they are and coming into the courtroom.

8 Q. Just so I understand what you're saying, have
9 you met with them before today to talk to them about
10 their medical history?

11 A. No.

12 Q. So, you have never had a meeting with
13 Mr. Amodeo or Mrs. Farnan to ask either one of them
14 about their medical history; am I correct?

15 A. Well, I met them in Phase I, but I didn't ask
16 them about their medical history.

17 Q. And that's my question --

18 A. I met them in the courtroom.

19 Q. I understand. You may have met them to shake

20 hands or to say hello; is that correct?
21 A. That's correct. That's correct.
22 Q. You've never had a meeting with them to take
23 their medical histories?
24 A. No, I have not.
25 Q. Now, Doctor, in your -- as a practitioner,
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1 have you ever diagnosed the specific causation of one
2 of your patients' diseases without meeting with the
3 patient?
4 A. I'm not quite certain of what your question
5 implies. I've been a consultant for decades, and as a
6 consultant, I have engaged in the diagnostic process
7 with physicians with whom I've consulted.
8 Q. My question was, in connection with the
9 patients that you treated, as a practitioner, did you
10 ever reach an opinion about what caused their disease,
11 without first meeting with the patient, doing a medical
12 exam, and/or taking a medical history?
13 A. Well, you'll have to differentiate. My
14 consultation on a patient, which did not necessarily
15 include examining the patient or personally taking a
16 history, but consulting with the personal physician,
17 I've often made diagnoses on the basis of consultation
18 with the caring physician.
19 Q. My question is -- I'm not talking about your
20 consultation with another physician. I'm talking in
21 connection with the patients that you treat.
22 In connection with the patients that you
23 treat as a practitioner, when you reach an opinion
24 about causation, have you ever done so without having a
25 meeting with the patient to do a medical exam or take a
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1 medical history?
2 A. Well, I can't quite comprehend your question,
3 because if I were the treating physician directly, I
4 would be meeting with the patient and taking a history.
5 Q. Okay. So when you make -- all I'm -- when
6 you do -- when you make a diagnosis for patients you
7 treat, you meet with them and take a medical history;
8 is that correct?
9 A. That's correct. I'm the personal physician.
10 Q. And there's other times when you've been a
11 consulting physician to other physicians; is that
12 correct?
13 A. Many times, yes.
14 Q. And in those situations, you reach a
15 diagnosis -- strike that -- you've reached opinions
16 about causation of disease, without actually meeting
17 with the patient or taking a history; is that what
18 you're telling me?
19 A. That's correct.
20 Q. Okay. When is the last time you did that,
21 sir?
22 A. As recently as about a month ago.
23 Q. And how frequently do you do that?
24 A. Well, in consultation with resident

25 physicians, I do that at least once a week.
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1 Q. Now, in connection with the work you've done
2 here, who selected the medical records that you looked
3 at?

4 A. I received the medical record from the
5 attorneys for the plaintiffs.

6 Q. And did you do any independent investigation,
7 beyond the records you received from the plaintiffs, to
8 look into the issue of causation?

9 A. Other than from the records, I did not.

10 MR. WEBB: Thank you.

11 Let Mr. Dodds --

12 MR. DODDS: Would it be all right, Your
13 Honor, if I have a couple of follow-up questions?

14 THE COURT: A couple.

15 VOIR DIRE EXAMINATION

16 BY MR. DODDS:

17 Q. Good morning, Dr. Richmond.

18 A. Good morning.

19 Q. I'm William Dodds.

20 Sticking with the records for a moment,
21 Doctor, I take it you understand you did not receive
22 all of the medical records for either Mrs. Farnan or
23 Mr. Amodeo, correct?

24 A. I don't know whether they were all of the
25 records.

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1 Q. Did you --

2 A. I examined what I was sent.

3 Q. Did you ask for more records?

4 A. No, I did not.

5 Q. Have you seen any X-rays, Doctor?

6 A. No, I have not.

7 Q. Any MRIs or CT scans?

8 A. No, I have not.

9 Q. You have not reviewed the pathology or the
10 cytology, correct?

11 A. From the record, I have.

12 Q. Okay. In terms of actually looking at it to
13 render a diagnosis as to the pathologic characteristics
14 of the tumors in question, you've not done that,
15 correct?

16 A. No, I've not.

17 Q. And you also have not carried out any other
18 testing yourself with respect to --

19 A. No, I have not.

20 Q. And, finally, Doctor, have you reviewed any
21 of the opinions or depositions taken in connection with
22 a medical malpractice action commenced by Mr. Amodeo?

23 A. No, I have not.

24 Q. And were you aware that he gave a deposition
25 in that matter long before any issues about the case

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1 against the tobacco companies arose?
2 A. Well, in his deposition of -- for this trial,
3 I became aware of the fact that there was such legal
4 action, but other than what is in the deposition, I
5 have no knowledge of that action.

6 Q. And you haven't read his deposition from that
7 case?

8 A. From that case?

9 Q. Correct.

10 A. No.

11 Q. And in terms of, for example, his condition,
12 if you had a patient who presented with a potential
13 cancer of the larynx or the hypopharynx, you would
14 refer that patient to an otolaryngologist for diagnosis
15 and treatment, would you not, sir?

16 A. Well, I think a physician could make a
17 reasonable diagnosis by physical examination,
18 appropriate physical examination, but the more detailed
19 diagnosis would depend on the microscopic examinations.

20 Q. And if you had a patient with a possibility
21 of such a cancer, you would get a specialist, for
22 example, an otolaryngologist, involved in the care,
23 treatment and diagnosis of that patient, would you not,
24 sir?

25 A. Yes, I would.

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1 MR. DODDS: Thank you, Your Honor.

2 THE COURT: Let me ask you a couple of
3 questions.

4 VOIR DIRE EXAMINATION

5 BY THE COURT:

6 Q. The specific interest in this case is based
7 upon smoking, as you know.

8 A. That's correct.

9 Q. And cancer, as it may or may not be related
10 to smoking.

11 What expertise do you have in those fields so
12 that you feel competent enough to render an opinion
13 about somebody's condition?

14 A. Well, I, as Assistant Secretary for Health
15 and Surgeon General in the United States, had the
16 responsibility for reviewing all of the medical data
17 concerning tobacco use and its health consequences and
18 rendering annual reports for the nation, for people in
19 the nation, on those issues.

20 And I did render a 15th annual report, that
21 is, the 15th report subsequent to the first Surgeon
22 General's Report, by Surgeon General Dr. Luther Terry
23 in 1964, in which we summarized all of the literature
24 in the world up to that point, some 30,000
25 publications, approximately.

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1 And on the basis of reviewing all of those
2 data, helped the Secretary for Health, Education and
3 Welfare at that time establish health policy for the
4 nation in relationship to smoking as health
5 consequences.

6 Q. Did that include addiction?
7 A. Including addiction, yes.
8 Q. Do you feel that you have special --
9 A. And in the preface to that report, I make the
10 statement that nicotine is a powerful, addicting drug.
11 Q. Do you feel you have special expertise in
12 this field because of the nature of your studies, your
13 exposure to other studies and literature in the field
14 of cancer, addiction, pulmonary medicine, things of
15 that nature, which generally is not the field that
16 you're in? You're in general practice, or the field
17 that you were in was general practice.
18 A. Well, I was professor of general pediatrics,
19 which includes adolescents, for most of my career, so I
20 have had an opportunity to be concerned about issues of
21 smoking and health; and then, of course, I spent four
22 years as a flight surgeon in World War II, in which I
23 was deeply immersed in cardiovascular and pulmonary
24 physiology as it related to flight and to air crews. I
25 feel I've had a very rather extensive experience.

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1 THE COURT: All right.
2 THE WITNESS: The clinical conditions are
3 associated with smoking and health.
4 THE COURT: All right, sir. Thank you very
5 much.
6 If you would just step out for a moment.
7 (The witness exited the courtroom.)
8 THE COURT: All right. The Court is
9 satisfied as to his qualifications to testify as an
10 expert in these fields, along with the decisions
11 rendered in other cases such as Wright v. Schulte and
12 Alford v. G. Pierce Woods, Heath versus Roman, Ramirez
13 and Quinn, that line of cases. The Court will allow
14 him to testify.
15 I don't want to, again, go over Phase I. I
16 don't want him to opine on any fraud issues, because I
17 don't think he's qualified on the issue of fraud, but
18 he may testify as to what effect -- because of his
19 psychiatric background, the conditions in the general
20 public area may have affected a child of 11, and in
21 that area in general terms.
22 So, I'll leave it up to you to develop that
23 kind of testimony, if need be.
24 All right. We'll take a few minutes and get
25 the jury out here.

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1 (A brief recess was taken.)
2 THE BAILIFF: Bringing in the jury.
3 (The jurors entered the courtroom.)
4 THE COURT: Good morning, folks.
5 JURY PANEL: Good morning.
6 THE COURT: Things haven't changed in the
7 whole year we've been together. I never get you going
8 on time.
9 And you know by now, when I say 10:00, it's
10 never going to be 10:00. We can't help it. There's

11 only so many hours in the day and so many things we
12 have to do; and unfortunately, what we do is we try to
13 pick the time, either in the early morning hours or
14 maybe late-in-the-day hour, to get done what we need to
15 get done. But sometimes it takes longer than we
16 thought.

17 Of course, you folks are sitting in there,
18 waiting around, doing nothing. And I hope you
19 understand that we feel very sorry for you folks in
20 there, locked in that little room, but there's not much
21 we can do about it. So, you'll have to put up with it
22 like you did before. We do appreciate it.

23 Over the night, has anybody seen anything on
24 television, read anything in the newspapers, or been
25 exposed in any manner, shape or form by conversation

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1 other otherwise, with other folks, anything relating to
2 this case or any of the issues that are involved in the
3 tobacco industry?

4 JURY PANEL: (Responds negatively.)

5 THE COURT: Specifically, nobody watched a
6 television show last night that had anything to do with
7 tobacco?

8 JURY PANEL: (Responds negatively.)

9 THE COURT: Saw anything in the paper this
10 morning, magazines, or yesterday or whatever it might
11 be? Nothing at all.

12 THE JURY PANEL: (Responds negatively.)

13 THE COURT: All negative answers. All
14 negative responses.

15 All right. Is everybody ready to proceed?

16 I don't have to go through all of the
17 information that we went through in the beginning of
18 this trial about how trials are conducted and what your
19 duties and responsibilities are. I think you're quite
20 familiar with all of that.

21 So, actually, we're just continuing on with
22 the same trial that we had before. We had two
23 different phases. We went through Phase I. We're now
24 in Phase II.

25 And in Phase II, the same procedure will be

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1 followed, basically with plaintiff putting on
2 witnesses, the defense cross examining, and then we'll
3 get into a situation, eventually, when the plaintiff
4 will do cross examination of defense witnesses. And
5 we'll go through that process. At the end, we'll ask
6 you to make some decisions.

7 Of course, pay attention to everything that's
8 being said by all sides, especially the testimony of
9 the witnesses, which is very important. And we will be
10 taking the usual breaks.

11 We will also, of necessity, be somewhat
12 delayed sometimes because of things we have to take
13 care of outside of your earshot, even during the course
14 of the trial, as you've experienced before. I just
15 want to bring you up to date on that.

16 All right. If you're ready, counsel.
17 MR. ROSENBLATT: Gentlemen, Your Honor.
18 THE COURT: Call your first witness, please.
19 MR. ROSENBLATT: Dr. Julius Richmond.
20 THE COURT: Sir, if you'll stand and be

21 sworn.

22 Thereupon:

23 JULIUS B. RICHMOND, M.D.
24 having been called as a witness, was duly sworn,
25 examined, and testified as follows:

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1 DIRECT EXAMINATION

2 BY MR. ROSENBLATT:

3 Q. Dr. Richmond, for the record, please tell the
4 members of the jury your full name and your present
5 professional address.

6 A. I'm Dr. Julius B. Richmond, and my present
7 address is the department of social medicine at the
8 Harvard Medical School at 641 Huntington Avenue,
9 Boston.

10 Q. Now, you and the jurors may look kind of
11 familiar to each other, because you testified a little
12 over a year ago to the same members of the jury panel
13 on October 21, 1998.

14 And I'm going to go through your
15 qualifications, but not in the kind of exhaustive
16 detail that I did, you know, a year ago.

17 You received your M.D. degree, your medical
18 doctor degree, in what year?

19 A. 1939.

20 Q. 60 years ago?

21 A. That's correct.

22 Q. And from what institution, from what medical
23 school?

24 A. From the University of Illinois in Chicago.

25 Q. You're from Chicago originally?

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1 A. That's correct.

2 Q. In what year did you become board-certified
3 in pediatrics?

4 A. In 1946.

5 Q. And the field -- the field of pediatrics goes
6 from what age to what age?

7 A. Well, we consider it from prenatal period,
8 from the fetus, all of the way through adolescence.

9 Q. Now, during World War II, did you serve as a
10 flight surgeon?

11 A. I did, for four years.

12 Q. And --

13 A. In the Air Force.

14 Q. Okay. During that period of time, even
15 though you were a pediatrician, during the period of
16 time during World War II, those four years, where you
17 served as a flight surgeon in the Air Force, were your
18 patients adults?

19 A. Yes. My patients were essentially either in
20 training to be air crew members or were already

21 certified as air crew members. So, I had a lot to do
22 with selection, as well -- and qualification, as well
23 as the care of medical problems that air crews
24 developed.

25 Q. So, tell us in a general way, during that
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1 four-year period, what kind of practice you had with
2 the -- with the airmen and the fliers in the Air Force.

3 A. Well, my practice consisted of screening,
4 so -- for flight qualifications, so if --

5 Q. To see if they were qualified to fly?

6 A. A lot depended on their sensory abilities,
7 pulmonary function, cardiovascular function, and
8 general muscular capacity, but we spent a great deal of
9 time in developing guidelines for high altitude flight,
10 which, of course, preceded our flights in space at the
11 current era.

12 Q. And then when World War II ended and you came
13 back to civilian life, where did you go? What did you
14 do in terms of your medical practice?

15 A. Well, I moved up through the ranks at my alma
16 mater, which was the University of Illinois College of
17 Medicine in Chicago, became a full professor there.

18 And then in 1953, moved to the State
19 University of New York to be chairman of the department
20 of pediatrics there, and ultimately I became dean of
21 the medical school as well. And then in 1971, I moved
22 to the Harvard Medical School.

23 Q. Okay. Let me ask you a couple of questions
24 about your tenure at the State University of New York.

25 You were chairman of the department of
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1 pediatrics during what time frame?

2 A. From 1953 to 1971, with the exception of an
3 interval 1965 and '66, when I went to Washington to
4 serve as the first director of the Head Start program
5 in the Office of Economic Opportunity, and during that
6 time I also developed the program which now is known as
7 the National Community Health Centers program. So that
8 was a program for all ages, so I was deeply involved in
9 developing the national plan for general medical care
10 for the poor during that time.

11 Q. The Head Start program was a program run by
12 the federal government?

13 A. Yes. Still is.

14 Q. And it's still in existence?

15 A. Yes.

16 Q. And tell us about what it was at the
17 beginning when you were involved with it.

18 A. Well, the Head Start program started as part
19 of the War on Poverty, which was initiated in 1964.
20 And early in 1965, because of my work concerning the
21 development of young children, I was asked to come to
22 Washington to see if one could develop a comprehensive
23 child development program for children who come from
24 low income backgrounds.

25 And so in the first summer of that program,

1 in 1965, we succeeded in enrolling 500,000 children in
2 2,700 centers across the United States in that program.
3 And that program, in response to your question, is what
4 we called and still call a comprehensive child
5 development program. It's called comprehensive because
6 it combines not only -- or includes not only early
7 childhood education, but medical care, nutritional
8 program, oral health, social services, parent
9 involvement, and, in particular, local community
10 governments. And that has prevailed over the 35 years
11 in existence.

12 Q. And as you say, it's still functioning today?

13 A. It now serves about 800,000 children a year.

14 Q. From all over the country?

15 A. And we -- from all over -- well, in
16 approximately 1,500 centers scattered around the
17 country, yes. But it's federally funded.

18 Q. Now, Dr. Richmond, when you were -- when you
19 were the dean of the medical school at the State
20 University of New York -- when was that, from about '65
21 to about 1970?

22 A. That's correct.

23 Q. During the --

24 A. With two years out to be in Washington.

25 Q. With the two years -- with the two years out

1 for the Heat Start program.

2 During those three years, then, were your
3 duties purely administrative, or did you also have a
4 hands-on role in terms of seeing patients and
5 practicing?

6 A. No. I still had the title of chairman of the
7 department of pediatrics and professor of pediatrics.
8 So, I was very active clinically during that time.

9 Q. So, you were at the State University of New
10 York for about 17 or 18 years?

11 A. 18 years.

12 Q. 18 years.

13 And then you went from there to the Harvard
14 Medical School in Boston, and that was about 1971?

15 A. That's correct.

16 Q. Now, when you went to Harvard, the Harvard
17 Medical School, what was your -- what was your title?
18 What were your duties?

19 A. Well, I went there as professor of child
20 psychiatry and human development, and my clinical
21 responsibilities were to be the chief of the department
22 of psychiatry at the Boston Children's Hospital, which
23 is affiliated with the Harvard Medical School, and to
24 simultaneously be the director of the Judge Baker's
25 Children Center, which is a child guidance clinic.

1 For approximately four or five months after I

2 arrived, the dean of the Harvard Medical School asked
3 me to assume the responsibilities for the department of
4 preventive and social medicine, so I simultaneously
5 served as the professor of preventive and social
6 medicine in the medical school, and that carried with
7 it also an appointment as professor of preventive and
8 social medicine in the Harvard School of Public Health.

9 Q. And then while you were -- at some point when
10 you were at Harvard, you received the presidential
11 appointment to become Surgeon General of the United
12 States?

13 A. Yes. In 1977, I was asked to come to
14 Washington to assume two responsibilities, both
15 presidential appointments. One is Assistant Secretary
16 for Health, in what was then the Department of Health,
17 Education and Welfare, and to be Surgeon General of the
18 United States Public Health Service, which was also in
19 the Department of Health and Human -- or Health,
20 Education and Welfare.

21 Q. Now, during your -- obviously I'm not going
22 to go into any kind of detail with the Surgeon
23 General's Reports. I simply want to establish now,
24 during your tenure as Surgeon General of the United
25 States, in what year was the very first report

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1 published under your tenure?

2 A. I had the responsibility for publishing what
3 we call the 15th anniversary report of the first
4 Surgeon General's Report on smoking and health. That
5 first report was rendered in 1964, so this was 1979,
6 and this was a comprehensive review of the state of our
7 knowledge on smoking and health at that time.

8 Q. In order to put yourself in a position to
9 pass judgment on what the other writers contributed to
10 the 1979 Surgeon General's Report, did you have to
11 familiarize yourself with the body of literature
12 relating to smoking and health during that time frame
13 between '64 and '79?

14 A. Yes. I was deeply immersed in the
15 compilation of that report and did pass on everything
16 that's in it prior to its release for publication.

17 Q. Now, the broad general title of the '79
18 Surgeon General's Report is: Smoking and Health, a
19 report of the Surgeon General, the Health Consequences
20 of Smoking, the Behavioral Aspects of Smoking,
21 Education and Prevention.

22 In this -- without going into, you know, any
23 detail, I'm simply asking you now in a general way, did
24 this 1979 Surgeon General's Report deal with the
25 subjects of lung cancer, throat cancer and addiction?

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1 A. Yes, that -- that report did.

2 MR. ROSENBLATT: Your Honor, this is already
3 in evidence, so --

4 THE COURT: All right.

5 MR. ROSENBLATT: I'll just -- should I give
6 it to you?

7 No.
8 THE COURT: Do we have a number on it so we
9 know what it is?
10 THE CLERK: 1530.
11 THE COURT: For the record, 1530?
12 THE CLERK: Yes, sir.
13 BY MR. ROSENBLATT:
14 Q. Now, the following year, the Surgeon
15 General's Report was not nearly as thick, but it still
16 had about 350 pages, and the title of the 1980 Surgeon
17 General's Report is: The Health Consequences of
18 Smoking for Women.
19 And could you just tell us -- obviously the
20 focus is women, but could you tell us in a general way
21 the subject matters covered in the 1980 Surgeon
22 General's Report?
23 A. Yes. In that report, because I was very much
24 concerned with the efforts to get more women to smoke
25 and the increasing incidence of lung cancer, in

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1 particular among women, as a consequence of the
2 increasing numbers of them that were smoking, I felt it
3 was very important to take note of that and to caution
4 women that if they smoked like men, they would die like
5 men as a consequence of smoking.

6 And, unfortunately, the prediction that we
7 made at that time, that lung cancer would exceed breast
8 cancer as a cause of death among women sometime in the
9 late '80s, unfortunately that prediction --

10 MR. REID: Your Honor -- excuse me.

11 THE WITNESS: -- has come to be true.

12 MR. REID: I object. This is repetitive
13 from Phase I and it's outside the qualifications.

14 THE COURT: Well, there's a certain amount of
15 it, yes. And I didn't want to get into it.

16 I'm going to have to ask the jurors -- now,
17 it's a long time ago, but you already have your
18 notes -- to try to remember as much as you can about
19 the testimony that Dr. Richmond gave in the general
20 concepts of Phase I.

21 I don't want to go into it again, but just as
22 sort of a reminder, so we know where we are, get up to
23 date, I don't mind that, but to get into any great
24 depth of it, I think you've already heard that
25 testimony.

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1 BY MR. ROSENBLATT:

2 Q. Now, Dr. Richmond, in looking at your --
3 okay. And then there was the 1981 Surgeon General's
4 Report, so that during your tenure as Surgeon General
5 of the United States, there were a total of three
6 reports?

7 A. That's correct.

8 Q. '79, '80 and '81. The title of the '81
9 report was: The Health Consequences of Smoking, The
10 Changing Cigarette, correct?

11 A. That's correct.

12 Q. Okay. As Surgeon General, have you read --
13 did you at that time read and have to approve basically
14 every word that went into the Surgeon General's Report?

15 A. Yes, I did.

16 Q. As a hands-on pediatrician, over the years,
17 did you have occasion to have a lot of experience in
18 the field of otolaryngology, the throat?

19 A. Yes. Physician -- pediatricians do have a
20 lot of experience in looking at, particularly ears, and
21 because of the prevalence of conditions like croup,
22 very concerned about the appearance of the larynx and
23 swelling of tissues in that area.

24 Q. In terms of -- well, just explain to the jury
25 conceptually when -- when someone is a professor,

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1 whether it's at Harvard or the University of Illinois
2 Medical School, you're a professor of medicine,
3 obviously you're involved with teaching, to a certain
4 extent, medical students and residents, but how does a
5 professor of pediatrics, or any field, in an academic
6 medicine setting still maintain a hands-on medical
7 practice where you actually see patients? So, explain
8 how there are those dual roles.

9 A. Well, in clinical fields, teaching always
10 centers around patients. So, either in an outpatient
11 setting or with hospitalized patients, one has medical
12 students and residents that one is seeing patients
13 with; and one of the time-honored teaching techniques
14 is to teach by example, so that clinical professors
15 need to retain their clinical competence so that they
16 can demonstrate to interns and medical students and
17 residence how to carry on competent, clinical
18 activities.

19 Q. Now, in the course of your medical career,
20 your curriculum vitae reflects you've written over 250
21 articles, which have been published, most of them in
22 peer-reviewed journals?

23 A. That's correct.

24 Q. You've written some books?

25 A. That's correct.

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1 Q. Explain to the jury, to the members of the
2 jury, the difference when you function as a primary
3 treating physician, with respect to a patient, and when
4 you are functioning as a consultant for a patient. And
5 I assume you have operated in both those roles
6 throughout your career?

7 A. Yes. Yes.

8 Q. Okay. So, please explain to the jury the
9 difference.

10 A. Well, when one is the physician for a
11 patient, one assumes the direct responsibility for all
12 of the diagnostic processes and procedures, and for
13 ordering appropriate consultations, and then for
14 carrying on the treatment and seeing to it that that
15 treatment is properly carried out.

16 When one serves as a consultant, one serves

17 essentially as an advisor to the caring physician, who
18 is the one who has the responsibilities I've just
19 described for direct care, and offering the benefit of
20 one's education and experience to that physician or
21 group of physicians, who are involved in the direct
22 care of the patient, and who have the responsibility
23 for the direct care of the patient.

24 Q. When you are functioning as a consultant, do
25 you have occasion to review the medical records,

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1 hospital records of other physicians relating to the
2 patient that you're being asked to consult about?

3 A. Yes. A record review is generally done.

4 Sometimes this involves also seeing the
5 patient, and sometimes it may not.

6 Q. Now, let me begin by asking you some specific
7 questions about Mary Farnan.

8 At some point in the past, prior to the time
9 your deposition was taken by the defense in this case,
10 we gave you medical records and hospital records on
11 Mary Farnan; is that correct?

12 A. That's correct.

13 Q. Let me hand those to you.

14 And if at any time during my questioning or
15 the questioning of the other counsel, please feel free
16 to, you know, to go through those records.

17 MR. WEBB: Do those have an exhibit number on
18 them or --

19 THE COURT: I thought we -- well, maybe we
20 hadn't.

21 MR. ROSENBLATT: I think they do.

22 MR. WEBB: What is it?

23 MR. ROSENBLATT: I think they do. 2.

24 THE COURT: Is that our number?

25 MR. WEBB: That's the deposition exhibit

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1 number, I think, Mr. Rosenblatt.

2 MR. ROSENBLATT: Oh, yes. No. Exactly.

3 It's Exhibit 2 --

4 THE COURT: Let's come over here for a minute
5 and we'll talk about this issue.

22 BY MR. ROSENBLATT:

23 Q. Dr. Richmond, tell the members of the jury in
24 a general way what those hospital records contain, such
25 as operative reports or --

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1 A. Yes. These records contain both summaries of
2 her inpatient care, but also leading up to that care,
3 the outpatient diagnostic procedures that she had,
4 which were quite extensive.

5 And then the pathology reports, the surgical
6 reports, and also reports of radiation therapy and
7 other kinds of care that she had during the course of
8 the several years that she was cared for.

9 Q. Do those records cover the time frame from
10 when she had the surgery on her left lung, then the
11 surgery on her right lung, and then the brain surgery?
12 A. That's correct. They start earlier than
13 that; prior to the diagnosis of her left upper lung
14 cancer.

15 MR. WEBB: Does that have an exhibit number?

16 MR. ROSENBLATT: We'll worry about that
17 afterwards.

18 BY MR. ROSENBLATT:

19 Q. Dr. Richmond, just for the purpose of putting
20 this in sequence, do these dates -- and by the way, in
21 addition to the medical records on Mary Farnan, you've
22 read at least one of her depositions; is that correct?

23 A. That's correct.

24 Q. And in that deposition, she described her
25 background, where she was born, her smoking history,

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1 her attempts to quit, her illness, things of that
2 nature?

3 A. That's correct.

4 Q. Okay. Now, on this chart, very simply, just
5 to put things in sequence, she was born July 25, 1955.
6 She began to smoke at the age of 11 --

7 A. That's correct.

8 Q. -- in 1966. Then I mentioned that --
9 because this starts the sequence of her medical
10 problems.

11 In October 1995, she had pain in her left
12 shoulder, which was diagnosed as a rotator cuff
13 problem, and surgery was performed. And is that
14 reflected in the records that you have?

15 A. The history of that?

16 Q. That background.

17 A. That procedure antedates this record, that
18 is, the October procedure.

19 Q. Okay.

20 A. But it was because of that that she had an
21 X-ray in December, I think, of 1995 at the Shands
22 Clinic in Gainesville.

23 Q. And then June 4, 1996, Mrs. Farnan had the
24 surgery for cancer in her left lung?

25 A. That's correct.

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1 Q. In the records, you --

2 A. Upper left.

3 Q. -- you have that operative record and you
4 have the events leading up to the diagnosis and the
5 surgery?

6 A. That's correct.

7 Q. And then we go almost a year later to May
8 1997, when Mrs. Farnan had surgery on her right lung
9 for cancer in that lung, and then we go to July 1998,
10 when she had the brain surgery.

11 In terms of the records that you have
12 reviewed, do the records cover this time span, and do
13 you have the records preceding the surgeries and

14 following the surgeries?
15 A. That's correct.
16 Q. Okay.
17 A. That's what's in this record.
18 Q. I'll just leave this here, in terms of your
19 testimony, so that if we need to figure out a date.
20 Based on your review of Mrs. Farnan's medical
21 records, her surgical records, radiation oncology,
22 pathology reports, whatever you've reviewed, did
23 Mrs. Farnan have lung cancer?
24 A. Yes, she did.
25 Q. Did she have bronchioalveolar lung cancer?
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1 A. From my review of the pathology reports, I
2 would say that she did not.
3 Q. What kind of lung cancer did she have, based
4 on your review of these records?
5 A. She had large cell adenocarcinoma and
6 squamous cell carcinoma of the lung.
7 Q. Dr. Richmond, in your review of the medical
8 records and hospital chart on Mrs. Farnan, and
9 you've -- in terms of a hospital record, there's the
10 various specialties: There's surgery, there's ICU,
11 radiation oncology, pathology, people -- radiologists
12 who review X-rays. Could you find one single instance
13 of any doctor, in any specialty, anywhere in these
14 records saying that he or she thought that the kind of
15 lung cancer Mrs. Farnan had was bronchioalveolar lung
16 cancer?
17 A. No, I could not.
18 Q. Do you have an opinion, Dr. Richmond, based
19 upon reasonable medical certainty and probability, as
20 to what caused Mrs. Farnan's lung cancer?
21 A. Yes. My opinion is that her long history,
22 some 30 years, of cigarette smoking was causally
23 related to her lung cancer.
24 Q. Based on your review of Mrs. Farnan's medical
25 records and hospital records, based upon your review of
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1 her deposition, the fact that she began to smoke at age
2 11; became a regular pack-and-a-half-a-day smoker when
3 she was about 13 or 14; smoked all her life; later on
4 in life she switched to Winston Lights and started
5 smoking about three and a half packs a day of Winston
6 Lights; tried many times on various occasions to quit
7 smoking; was never successful for more than a day;
8 smoked through her radiation therapy after she was told
9 that she had lung cancer, but following the surgery for
10 cancer in her left lung, in June of 1996, she quit
11 smoking.
12 MR. WEBB: Your Honor, I hate to object, but
13 I just -- is this a hypothetical or is he summarizing a
14 deposition? I object to the form of the question.
15 MR. ROSENBLATT: It's a hypothetical.
16 THE COURT: I think it's a hypothetical.
17 Overruled.
18 BY MR. ROSENBLATT:

19 Q. And with taking into account the hypothetical
20 I've just given you, which I represent to you is based
21 on the evidence that will be in this case, based on
22 your review of the history contained in Mary Farnan's
23 hospital and medical records and reading her
24 deposition, do you have an opinion, based upon
25 reasonable medical probability, as to whether Mary

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1 Farnan was addicted to cigarettes, to the nicotine in
2 cigarettes?

3 MR. WEBB: Your Honor, I just would object on
4 lack of qualifications.

5 THE COURT: Overruled.

6 A. In my opinion, she was addicted to nicotine.

7 BY MR. ROSENBLATT:

8 Q. Can you tell us when she became addicted, at
9 what age or at what approximate age she became
10 addicted?

11 MR. WEBB: Objection, unless there's a
12 foundation as to what he's basing his knowledge on.
13 Object to the form of the question.

14 THE COURT: Well, of course, this can be
15 tough.

16 Overrule the question -- the objection to
17 that.

18 BY MR. ROSENBLATT:

19 Q. You can answer it. Can you tell us at
20 approximately what age Mary Farnan became addicted to
21 smoking cigarettes?

22 A. Well, I think between the age of 11 and 14,
23 she -- and addiction is usually a gradual process.
24 Nicotine is no exception. And any -- and with the use
25 of any addicting substance, full-fledged addiction is

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1 attained as to a gradual process. So, over the period
2 of 11 to 14, I think she became rather seriously
3 addicted, or as I said in the preface to my '79 report,
4 powerfully addicted.

5 MR. REID: Your Honor, I object.

6 THE COURT: I sustain the objection.

7 Stick with the question.

8 Do you have a question?

9 MR. ROSENBLATT: Yes.

10 BY MR. ROSENBLATT:

11 Q. Well, Mrs. Farnan was apparently able to quit
12 smoking after she had the surgery on her left lung in
13 June of 1996 --

14 MR. REID: Your Honor, I object. That's
15 testimony and leading by counsel.

16 THE COURT: Well, I think that's part of that
17 hypothet, wasn't it?

18 MR. ROSENBLATT: Yes.

19 BY MR. ROSENBLATT:

20 Q. Wouldn't that indicate to you that maybe she
21 wasn't addicted, if she could quit after the lung
22 surgery?

23 A. Well, people who are addicted, after long

24 periods of trying, sometimes are able to quit. And, of
25 course, I would add that the matter of lung cancer can
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1 be a pretty potent motivator to cause people to want to
2 quit.

3 Q. Now, Dr. Richmond, let me go to Mr. Amodeo.
4 As with Mary Farnan, I sent to you a variety
5 of medical records on Mr. Amodeo; is that correct?

6 A. That's correct.

7 Q. Let me hand those to you.

8 And in terms of the records that you reviewed
9 concerning Frank Amodeo, did those records include
10 history relating to his smoking history?

11 A. Yes, they do.

12 Q. And did those records reflect the symptoms
13 that Mr. Amodeo was having in his throat and his weight
14 loss and other symptoms, which caused him to see a
15 Dr. Collins in January of 1987?

16 A. Yes. The record indicates that.

17 Q. Okay. And do his records reflect the
18 intensive radiation therapy that he received to his
19 throat area?

20 A. Yes, they do.

21 Q. Do those records provide you, with your
22 background and experience, with the explanation as to
23 why Mr. Amodeo is unable to eat or drink in a normal
24 fashion?

25 A. Yes, they do.

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1 Q. How would you describe the type of cancer
2 that Mr. Amodeo had?

3 A. Well, the cancer that he had is a cancer that
4 involved the larynx, the epiglottis, what we call the
5 hypopharynx, or the throat leading to the esophagus,
6 which carries food to the stomach, and also the base of
7 the tongue.

8 Q. And, Dr. Richmond, I'm going to ask you the
9 same type of question I asked you concerning
10 Mrs. Farnan.

11 Based on your review of Frank Amodeo's
12 medical records, based on your review of his
13 deposition, based on your understanding of Frank
14 Amodeo's smoking history: He was born in 1939; he
15 began smoking at the age of 14; he was able to quit
16 smoking for about a year in 1966; and he was
17 essentially a heavy smoker all his life, up until the
18 time his throat cancer was diagnosed, do you have an
19 opinion, based upon reasonable medical probability or
20 certainty, as to what caused Frank Amodeo's throat
21 cancer?

22 A. Yes, I do.

23 Q. And what is that opinion?

24 A. That the long-term smoking that he was
25 engaged in and the intensity of the smoking would

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1 indicate to me that cigarette smoking was the factor
2 that produced the development of the cancer in his
3 throat.

4 Q. Is there really any doubt whatsoever in your
5 mind on that subject, as to the fact that cigarette
6 smoking caused his throat cancer?

7 A. No. And I would regard this as kind of a
8 classic textbook case of how cancer evolves as a
9 consequence of cigarette smoking.

10 Q. Now, Mr. Amodeo was engaged in a business for
11 a number of years, in the Orlando area, manufacturing
12 Cypress clocks, working with wood, where he did come in
13 contact with wood dust or saw dust in connection with
14 that work.

15 Have you ever seen anything in the literature
16 about that kind of exposure causing the kind of throat
17 cancer that Mr. Amodeo had?

18 A. No, I have not.

19 Q. And my now having told you about that history
20 of exposure to wood dust or saw dust, does that, in any
21 way, alter your opinion or weaken your opinion
22 concerning your conclusion that cigarette smoking
23 caused his lung cancer?

24 A. No, it does not.

25 Q. You know the ages of Frank Amodeo and Mary
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1 Farnan. Mrs. Farnan is 44; Mr. Amodeo is 60. You know
2 when they started to smoke.

3 Based on your many years as a pediatrician,
4 based on your years of service in connection with Head
5 Start, your years of service as Surgeon General in the
6 United States, going back to the '50s, '60s, '70s and
7 '80s, are you able to express an opinion as to what
8 normal, typical teenagers, at the time that Mary Farnan
9 and Frank Amodeo were teenagers, were exposed to from
10 the tobacco companies on the issue of whether
11 cigarettes were unhealthy or posed a health risk?

12 MR. WEBB: Your Honor, I object to the form
13 of the question. Lack of qualifications. Object to
14 the form of the question.

15 THE COURT: Hold on one second. Let me read
16 it here.

17 MR. REID: Your Honor, we would also object
18 because it's repetitive of Phase I testimony that this
19 witness gave.

20 THE COURT: Okay. Let's talk about this
21 sidebar.

22 BY MR. ROSENBLATT:

23 Q. Dr. Richmond, based on your review of the
24 medical and hospital records of Mary Farnan and Frank
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1 Amodeo and their depositions, do you have any reason to
2 believe that their upbringing was so unique in any
3 respect that they would not have been exposed to what
4 the normal teenagers at the time they were teenagers
5 were being exposed to, in terms of the media and from

6 the tobacco companies?
7 A. No. I don't believe that they would have
8 been insulated from any of that.
9 Q. Dr. Richmond, yesterday, during the defense
10 opening statement, they put up the history -- the
11 history of the warnings that were mandated by Congress,
12 the various warnings that have been on packages of
13 cigarettes and the four rotating warnings that started
14 in 1985.

15 To your knowledge, has there ever been a
16 warning on packages of cigarettes which say: Cigarette
17 smoking --

18 THE COURT: Hold on a second. We have to go
19 to sidebar for a second.

18 BY MR. ROSENBLATT:

19 Q. Dr. Richmond, do you still to this day have a
20 relationship to the Harvard Medical School?

21 A. Yes. I'm professor emeritus at Harvard
22 Medical School.

23 Q. And as --

24 A. And my office is there.

25 Q. You still have an office there, and you go to
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1 that office on a daily basis?

2 A. Daily.

3 Q. Dr. Richmond, are you charging anything for
4 your time for coming down here and testifying before
5 this jury?

6 A. No. No.

7 MR. ROSENBLATT: No further questions.

8 THE COURT: All right. That gives us a
9 little time earlier than we anticipated for lunch, but
10 before we get into cross examination, we'll go ahead
11 and take our lunch break, rather than break up the
12 cross.

13 So it's a quarter of 12:00. Let's get back
14 here at 1:00 o'clock. Give you an hour and 15 minutes,
15 folks.

16 And the usual admonition: Do not make up
17 your mind about anything or discuss the case with
18 anyone.

19 (The jury was excused from the courtroom.)

20 THE COURT: One second, please.

21 Doctor, you're still on the witness stand
22 under oath. You know the rules. You cannot discuss
23 your testimony with anyone, including the lawyers over
24 the lunch break.

25 THE WITNESS: Thank you.

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1 THE COURT: We will be back here at 1:00
2 o'clock.

3 (Court was adjourned for luncheon recess at
4 11:45 a.m.)

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